

DETAILED ACTION

Newly submitted claims 35-42 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: newly presented claims 35-42 are directed to a progressive game system that balances multiple gaming machines of different denomination based on adjusting the odds of winning (pg 20:28-21:10 of the specification as filed) which is an independent or distinct species from the previously presented claim 35-42 which were directed to a progressive game that balances gaming machines of different denominations based on adjustments of the wager progressive contribution amount (pg 21:14-23 of the specification as filed).

MPEP 819 states that “the general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter”. The amended claims 35-42 are directed to an invention that is independent or patentably distinct from the invention originally elected species and treated on the merits. The species as described in the specification are materially different processes and are not capable of operation together. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species.

In addition, these species are not obvious variants of each other based on the current record and more importantly are not capable of operating together as a combination.

Further, the specification as originally filed does not provide adequate support for the combination of progressive game system that balances multiple gaming machines of different denomination based on adjusting the odds of winning (pg 20:28-21:10) and a progressive game that balances gaming machines of different denominations based on adjustments of the wager progressive contribution amount (pg 21:14-23) and it is completely silent regarding their proper combined operation in a single system for managing a progressive jackpot as amended.

Furthermore, there is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Because the newly presented amended claims 35-42 are drawn to an invention other than the one elected, and since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35-42 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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The amendment filed on 04/27/2010 presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are not drawn to the same method of operation as originally presented.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID DUFFY whose telephone number is (571)272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

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/Peter D. Vo/

Supervisory Patent Examiner, Art Unit 3714